



EV546076980

PATENT APPLICATION
Docket No. MS1-089USC1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)
)
Shoff et al.)
)
Serial No.: 09/349,638) Appeal No.
)
Confirmation No. 6866)
)
Filed: July 8, 1999)
)
For: Interactive Entertainment System for)
Presenting Supplemental Interactive)
Content Together with Continuous)
Video)
)
Examiner: Goddard, B.)

The Honorable Commissioner of Patents
Mail Stop Appeal Brief - Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

BRIEF OF APPELLANT

The Appellant has filed a timely Notice of Appeal from the action of the Examiner in finally rejecting all of the claims that were considered in this application. This Brief is being filed under the provisions of 37 C.F.R. § 1.192. The Filing Fee, as set forth in 37 C.F.R. § 1.17(c), is submitted herewith.

REAL PARTY IN INTEREST

The real party in interest is Microsoft Corporation, the assignee of all right, title and interest in and to the subject invention by way of assignment from Shoff

12/02/2004 MAHME1 00000019 120769 09349638

01 FC:1402 340.00 DA

et al., who is the named inventive entity and is captioned in the present brief, to the Microsoft Corporation by way of assignment document.

RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any other appeals or interferences which will directly affect, be directly affected by, or otherwise have a bearing on the Board's decision on this pending appeal.

STATUS OF CLAIMS

Claims 56-57 and 61-67 stand rejected and are pending in this Application. Claims 56-57 and 61-67 are appealed. Claims 1-55, 58-60 and 68-74 were previously canceled. Claims 56-57 and 61-67 are set forth in the Appendix of Appealed Claims.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection.

SUMMARY OF INVENTION

This invention concerns an interactive entertainment system for supplying interactive supplemental content along with continuous video content programs to viewers. Fig. 5 shows a viewer computing unit, referenced generally as numeral 90, in more detail. The viewer computing unit 90 includes a processor 92, a volatile memory 94, and a program memory 96. The viewer computing unit 90 also has at least one receiver, and possibly two receivers, for receiving the video

stream from the headend and the digital supplemental data from the headend or ISP. The first receiver is in the form of a tuner 98 which tunes to the channel or broadcast frequency to receive a video data stream from a program source, such as the headend, broadcaster, or other program provider. The second receiver, referenced generally as 100, can be implemented as a second tuner for receiving the content over a cable or wireless distribution network, or a modem for receiving the supplemental content over the Internet or other data network.

A channel navigator application 102 is stored in program memory 96 and executes on the processor 92 to control the tuners 98 and 100 to select a desired channel for receiving the video content programs. An EPG application 104 is stored in program memory 96 and executes on the processor 92 to organize programming information downloaded from the EPG server at the headend. The EPG 104 supports a displayable user interface (UI) which visually correlates programs titles to scheduled viewing times and tuning information, such as a channel, in a scrollable grid format. The viewer computing unit 90 also has an interactive support module in the form of browser 106 which is kept in memory 96. The browser 106 is dynamically loaded on processor 92 when needed to render content, such as a hypertext document, from an ISP or other content provider. The browser can be implemented as a hyperlink browser, or more particularly, as an Internet Web browser.

[Excerpts Taken from the Application, Pages 15-16].

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claims 56, 61, 63, and 67 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,861,881 to Freeman et al. (hereinafter “Freeman”) in view of U.S. Patent 5,884,056 to Steele (hereinafter “Steele”).

2. Whether Claim 64 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of Steele.

3. Whether Claims 65 and 66 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of Steele.

4. Whether Claims 57 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of Steele and further in view of United State Patent No. 5,629,733 to Youman et al (hereinafter “Youman”).

5. Whether Claim 62 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of Steele and further in view of Youman.

ARGUMENT

First Ground of Rejection. Claims 56, 61, 63, and 67 satisfy the requirements of 35 U.S.C. §103 and therefore are not obvious over Freeman in view of Steele.

1. Claims 56, 61 and 67 recite an Internet Browser that is Dynamically Loadable

Claim 56 recites “an Internet browser stored in the memory, the Internet browser being dynamically loadable for execution on the processor when the tuner is tuned to a channel carrying a video content program that is interactive”.

Claim 61 recites “in an event that the program is interactive compatible, retrieving a target specification associated with the program and dynamically launching an Internet browser to activate the target resource in support of interactive functionality for the program”.

Claim 67 recites “in an event that the program is interactive compatible, retrieving a target specification associated with the program and launching an Internet browser to activate the target resource in support of interactive functionality for the program”, and “automatically displaying the interactive supplemental content together with the program”.

2. Neither Freeman nor Steele, alone or in combination, disclose teach or suggest a Dynamically Loadable Internet Browser

Freeman and Steele, alone or in combination, do not disclose, teach or suggest an “Internet browser being dynamically loadable for execution on the processor when the tuner is tuned to a channel carrying a video content program that is interactive” as recited in Claim 56. Additionally, Freeman and Steele, alone or in combination, do not disclose, teach or suggest “dynamically launching an Internet browser to activate the target resource” as recited in Claim 61 or “launching an Internet browser to activate the target resource” as recited in Claim 67.

Freeman is directed to an interactive computer system that provides “not only the ability to branch amongst parallel transmitted data streams, but also, the capability to seamlessly integrate input from other media, such as CD-ROMs and laser disks, into the presentation”. *Freeman, Col. 2, Lines 15-19*. The system of Freeman includes a vertical blanking interval switch, as described in the following excerpt:

A vertical blanking interval (VBI) switch 180 is connected to the microprocessor 108 so that the input may be switched during the vertical blanking interval of the current stream, resulting in a seamless switch to the viewer. Based on user responses and control codes, it is assumed that the microprocessor 108 determines that a switch from video signal A to video signal C should be performed. A command is issued from the microprocessor 108 to the RF demodulator 102B commanding a switch to the channel and data stream on which video signal C is located. *Freeman, Col. 9, Lines 37-51*.

The system of Freeman utilizes “trigger points” to provide additional data, which is described in Freeman as follows:

The trigger points 900 correspond to times when interactive events are scheduled to take place. These interactive events could be the selection and playing of video, audio segments or the display of graphics. While the choice of particular video, audio or graphics is still dependent on viewer selections, the viewer selections in response to displayed graphical interrogatory messages are preferably made during a period at the onset of the program or when a viewer first tunes into the program. These viewer selections are then utilized as inputs to macros called up at later times during the program by the controller upon the occurrence of the trigger points, identified to the interactive computer by unique codes embedded in the video signal.

The trigger points correspond to the times when the conventional program content can be altered and personalized

for those subscribers capable of receiving the interactive signal. *Freeman, Col. 12, Lines 37-53.*

Freeman also describes that each trigger point “is identified preferably through the broadcast of ACTV codes sent as part of the composite interactive program signal.” *Freeman, Col. 13, Lines 15-17.* Freeman describes the use of the trigger points as follows:

Upon extraction of the codes by the data decoder, the CPU 108 reads and interprets the codes and calls from memory a particular user selection(s) designated by the trigger point codes. The user selections correspond to subscriber answers to a series of interrogatory messages preferably presented at the beginning of the program. After obtaining the appropriate user selection(s), the controller 108 reads and performs the executable instructions using the user selection(s) as input(s) in the macro algorithm. The result of the algorithm is either a selected video stream, audio and/or selected graphics response. The video/audio response can be called from memory if it is prestored, called from external data storage, or the controller can command the switch to branch to the particular video audio stream if the response is broadcast concurrently with the trigger point. *Freeman, Col. 13, Lines 27-45.*

Thus, Freeman describes a system that uses a trigger point identified through the broadcast of ACTV codes to call from memory a particular user selection(s) designated by the trigger point codes that correspond to subscriber answers to a series of interrogatory messages preferably presented at the beginning of the program.

In rejecting claims 56, 61, and 63-67, the Examiner makes the following assertion:

In addition, Freeman discloses Interactive programs can be created using the Internet. Interactive program authors can access a particular internet site and download graphics, audio and video clips and suggested interaction (col. 19, line 34+). Thus, by selecting the online menu to access the Internet, the system must be configured with Dynamic-link library (DLL) file associated with an application so that when online menu is selected, the DLL file is loaded and executed to call up an application for accessing the Internet. *Office Action Dated June 8, 2004, Page 6 (emphasis added).*

This assertion is unsupported and incorrect. Freeman does not disclose, teach or suggest that “by selecting the online menu to access the Internet, the system must be configured with Dynamic-link library (DLL) file associated with an application so that when online menu is selected, the DLL file is loaded and executed to call up an application for accessing the Internet” as asserted by the Office. *Office Action Dated June 8, 2004, Page 6.* Rather, Freeman merely describes downloading graphics, audio and video clips from an Internet site to *create* an Interactive program, as shown in the following excerpt of Freeman asserted by the Examiner:

Interactive programs of the present invention can be created using the Internet. Interactive program authors can access a particular Internet site and download graphics, audio and video clips and suggested interactions. The author can then use these elements in the authoring tools to create an interactive program.

Furthermore, viewers can watch interactive programs from the Internet itself using the systems of the present invention. From an Internet site, viewers can access a single channel interactive program, such as described above. The viewer would watch the video on his or her computer, while the audio and/or text/graphics from Web site locations, for example, would be presented as a function of his or her specific choices via interactive commands.

In addition, viewers can choose between multiple video streams originating from a site on the Internet. The seamless branching between different video streams would occur through interactive commands resident in the viewer's computer. *Freeman, Col. 19, Lines 34-52.*

As shown in the above excerpt, Freeman merely describes the creation of an interactive program using graphics, audio and video clips downloaded from an Internet site. Nowhere in the Freeman reference is there disclosure, teaching, or suggestion for the assertion by the Examiner that “when online menu is selected, the DLL file is loaded and executed to call up an application for accessing the Internet”. *Office Action Dated June 8, 2004, Page 6.* Indeed, Freeman does not even mention a dynamic link library, or include the words “DLL” or “dynamic”.

The Examiner correctly asserts that Freeman does not specifically disclose an Internet browser stored in the memory. The Examiner then asserts Steele at column 5, lines 10+ to cure the defects of Freeman. The referenced section of Steele, however, merely states that “a client machine 10 includes a computer or other device (as discussed above), running a Web browser program” and makes no mention as to how the web browser program is loaded or discloses criteria for loading the web browser program. *Steele, Col. 5, Lines 10-12.*

3. Claims 56, 61 and 67 are patentable over Freeman in view of Steele

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970). Freeman and Steele, alone and in combination, are silent as to the claimed aspect of “the Internet browser being dynamically loadable for execution on the processor when the tuner is tuned to a channel carrying a video content program that is interactive” as claimed in Claim 56. Freeman does not show this feature nor address loading of the Internet browser. Rather, Freeman focuses on display of user selections in response to trigger points. Steele does not correct the defects of Freeman. Accordingly, neither Freeman nor Steele, alone or in combination, disclose, teach or suggest an “Internet browser being dynamically loadable for execution on the processor when the tuner is tuned to a channel carrying a video content program that is interactive” as claimed in Claim 56. Further, neither Freeman nor Steele, alone or in combination, disclose, teach or suggest “dynamically launching an Internet browser to activate the target resource” as claimed in claim 61 nor “launching an Internet browser to activate the target resource” as claimed in claim 67.

Additionally, neither Freeman nor Steele, alone or in combination, disclose, teach or suggest the recited features for loading a web browser. Claim 56 recites “the Internet browser being dynamically loadable for execution on the processor when the tuner is tuned to a channel carrying a video content program that is interactive”. (emphasis added). Claims 61 and 67 recite “in an event that the program is interactive compatible, ...”

launching an Internet browser”. (emphasis added). As previously described, Freeman makes no mention of a browser whatsoever and Steele does not disclose, teach, or suggest the loading of a browser. Accordingly, neither Freeman nor Steele, alone or in combination, disclose, teach or suggest the above features. Therefore, it is respectfully submitted that the Examiner has not made a *prima facie* showing of obviousness with respect to the subject claims. Claim 63 depends from claim 61 and is allowable by virtue of this dependency.

For at least these reasons, Claims 56, 61, 63 and 67 satisfy the requirements of 35 U.S.C. § 103 so as to be patentable over Freeman and Steel, alone and in combination. The Appellant respectfully requests the Board to overturn the First Ground of Rejection.

Second Ground of Rejection. Claim 64 satisfies the requirements of 35 U.S.C. §103 and therefore are not obvious over Freeman in view of Steele.

1. Claim 64 recites Determining if a Program is Interactive Compatible by Checking a Channel Separate from a Channel Carrying a Video Content Program

Claim 64 is directed to a “computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program” by “determining if a program is interactive compatible by checking a channel separate from said channel carrying the video content program” and “dynamically launching an Internet browser”.

2. Neither Freeman nor Steele, alone or in combination, disclose, teach or suggest such Determining

Freeman is directed to a system for integrating video programming. Freeman describes a system that uses a trigger point identified through the broadcast of ACTV codes to call from memory a particular user selection(s) designated by the trigger point codes that correspond to subscriber answers to a series of interrogatory messages preferably presented at the beginning of the program. Thus, Freeman obtains the trigger point from the broadcasted ACTV codes. Steele does not correct the defects of Freeman, and again is used only for its mention of a Web browser.

3. Claim 64 is patentable over Freeman in view of Steele, either alone or in combination

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970). As previously stated in relation to the First Ground of Rejection (the arguments contained therein are hereby incorporated into this argument), Freeman and Steele, alone and in combination, are silent as to the claimed aspect of “dynamically launching an Internet browser” as recited in Claim 64. Freeman does not show this feature nor address launching of an Internet browser. Rather, Freeman focuses on display of

user selections in response to trigger points. Steele does not correct the defects of Freeman as previously described.

Additionally, neither Freeman nor Steele disclose, teach or suggest the recited feature of “determining if a program is interactive compatible by checking a channel separate from said channel carrying the video content program” as recited in Claim 64. The Office asserts Freeman at column 13, lines 45+ for such a teaching, which is excerpted as follows:

As mentioned above, a series of interrogatory messages are preferably presented when the subscriber begins watching the interactive program. These interrogatory messages can be presented in any one of three ways. First, the interrogatory messages can be presented as graphics displays overlaid by the interactive computer workstation onto a video signal, wherein the graphics data is sent in the vertical blanking interval of the composite interactive signal, or alternatively stored on the hard disk or external storage. Second, the interrogatory messages are presented as graphics displays as discussed above, except the graphics data comes from local storage, external data storage (e.g., CD ROM, cartridge, etc.), or a combination of data in the VBI and data called from either local or external data storage. Third, graphics data can be presented in the form of user templates stored at the interactive computer workstation. *Freeman, Col. 13, Lines 45-60.*

In the referenced section, however, Freeman merely describes sources for a display of interrogatory messages that are answered by the subscriber when the subscriber begins watching the interactive program. This section does not disclose, teach, suggest or even mention a determination of interactive content.

Freeman discusses the use of “trigger points”, in which “[e]ach trigger point is identified preferably through the broadcast of ACTV codes sent as part of the composite interactive program signal.” *Freeman, Col. 13, Lines 15-17 (emphasis added)*. Therefore, the ACTV codes are part of the interactive program signal itself, and are not provided through a channel separate from the channel carrying the video content program. Thus, Freeman merely detects interactive content through use of the trigger points, and does not disclose, teach, or suggest, alone or in combination with Steele, that a “determination is made as to whether a program is interactive compatible by checking a channel separate from a channel carrying the video content program for presence of supplement content” as claimed in claim 64.

The Examiner makes the unsupported assertion that “it would have been obvious to one of ordinary skill in the art to modify Freeman to use the teaching as taught by Steele in order to allow computer user to surf the Web.” *Office Action Dated June 8, 2004, Page 10*. When applying 35 U.S.C. 103, however, the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination and must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. *See MPEP § 2141 and Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 220 USPQ 182, 187 n.5 (Fed. Cir. 1986). Thus, it is respectfully submitted that the

Examiner has engaged in impermissible hindsight reconstruction based on the subject specification. Further, it is respectfully submitted that with even such impermissible hindsight reconstruction, the combination would not result in the recited features of Claim 64.

For at least these reasons, Claim 64 satisfies the requirements of 35 U.S.C. § 103 so as to be patentable over Freeman and Steel, alone and in combination. The Appellant respectfully requests the Board to overturn the Second Ground of Rejection.

Third Ground of Rejection. Claims 65 and 66 satisfy the requirements of 35 U.S.C. §103 and therefore are not obvious over Freeman in view of Steele.

1. Claims 65 and 66 recite an Icon for an Interactive Program

Claim 65 recites a “computer-implemented method for activating interactive supplemental content upon tuning to a channel carrying the video content program” by “determining if a program is interactive compatible, where an interactive compatible program is associated with target resources containing data which support interactive functionality in conjunction with the interactive compatible program, the target resources being located by corresponding target specifications”, “displaying an icon to visually inform the viewer that the program is interactive compatible” and “in an event that the program is interactive compatible, retrieving a target specification associated with the program and launching an Internet

browser to activate the target resource in support of interactive functionality for the program”.

Claim 66 recites a “computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program” by “determining if a program is interactive compatible, where an interactive compatible program is associated with target resources containing data which supports interactive functionality in conjunction with the interactive compatible program, the target resources being located by corresponding target specifications”, “displaying the interactive supplemental content in response to the viewer activating an icon”, and “in an event that the program is interactive compatible, retrieving a target specification associated with the program and launching an Internet browser to activate the target resource in support of interactive functionality for the program”.

2. Neither Freeman nor Steele, alone or in combination, disclose, teach or suggest an Icon for an Interactive Program

The Examiner asserts that Steele discloses the claimed Icon. Contrary to the Office’s assertion, however, Steele does not disclose displaying an icon to visually inform the viewer that the program is interactive compatible. Indeed, the only mention of the word “icon” in Steele is in relation to a hyperlink, an example of which is shown in the following excerpt:

The World Wide Web facilitates user access to information resources by letting people jump from one server to another

simply by selecting a highlighted word, picture or icon (a program object representation) about which they want more information--a maneuver known as a "hyperlink". *Steele, Col. 2, Lines 30-34.*

Freeman does not mention the word "icon", and therefore does not cure the defects of Steele. The Office also asserts a graphical interrogatory message of Freeman at col. 13, lines 45+, which is again excerpted as follows:

As mentioned above, a series of interrogatory messages are preferably presented when the subscriber begins watching the interactive program. These interrogatory messages can be presented in any one of three ways. First, the interrogatory messages can be presented as graphics displays overlaid by the interactive computer workstation onto a video signal, wherein the graphics data is sent in the vertical blanking interval of the composite interactive signal, or alternatively stored on the hard disk or external storage. Second, the interrogatory messages are presented as graphics displays as discussed above, except the graphics data comes from local storage, external data storage (e.g., CD ROM, cartridge, etc.), or a combination of data in the VBI and data called from either local or external data storage. Third, graphics data can be presented in the form of user templates stored at the interactive computer workstation. *Freeman, Col. 13, Lines 45-60.*

In the referenced section, Freeman merely describes graphical displays, and does not disclose, teach or suggest an icon.

3. Claims 65 and 66 are patentable over Freeman in view of Steele, either alone or in combination

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q.

494 (C.C.P.A. 1970). It is respectfully submitted that the Examiner has not shown as to how the graphical interrogatory messages teach or suggest “displaying an icon to visually inform the viewer that the program is interactive compatible” as claimed in Claim 65 or “display [of] the interactive supplement content in response to the viewer activating an icon” as claimed in claim 66. Additionally, as previously discussed in relation to the First Ground of Rejection, neither Freeman nor Steele, alone or in combination, disclose, teach or suggest “launching an Internet browser” as claimed in claims 65 and 66. Therefore, it is respectfully submitted that a *prima facie* case of obviousness has not been established.

For at least these reasons, Claims 65 and 66 satisfy the requirements of 35 U.S.C. § 103 so as to be patentable over Freeman and Steel, alone and in combination. The Appellant respectfully requests the Board to overturn the Third Ground of Rejection.

Fourth Ground of Rejection. Claim 57 satisfies the requirements of 35 U.S.C. §103 and therefore is not obvious over Freeman in view of Steele and further in view of Youman.

1. Claim 57 recites an EPG stored in the memory and executed on the processor to organize program information

Claim 57 is directed to “a viewer computing unit as recited in Claim 56” and further describes “an electronic programming guide (EPG) stored in the memory and executable on the processor to organize programming information, the EPG associating a target specification to a target resource with a video content program” and “the Internet browser activating the target resource when the tuner is tuned to the video content program”.

2. Neither Freeman, Steele, nor Youman, alone or in combination, disclose, teach or suggest an EPG associating a target specification to a target resource with a video content program

As previously described, Freeman recites a system that uses a trigger point identified through the broadcast of ACTV codes to call from memory a particular user selection(s) designated by the trigger point codes that correspond to subscriber answers to a series of interrogatory messages preferably presented at the beginning of the program. Steele does not correct the defects of Freeman, and again is used only for its mention of a Web browser. The Examiner then asserts Youman to correct the defects of Freeman and Steele. The Appellant respectfully disagrees.

The Office first asserts Freeman for a viewer-computing unit. The Examiner then asserts Steele for teaching of the Internet browser. As previously stated, neither Freeman nor Steele, alone or in combination, disclose, teach or suggest “the Internet browser being dynamically loadable”

as claimed in claim 56. Youman does not cure this defect in Freeman and Steele. Accordingly, this claim is allowable for at least this reason.

The Office then correctly asserts that neither Freeman nor Steele specifically discloses an EPG stored in the memory and executed on the processor to organize program information. To cure the defects of Freeman and Steele, the Office asserts Youman for teaching of an “EPG associating a target specification to a target resource with a video content program” as claimed in Claim 57. The Applicant respectfully disagrees.

Beginning at page 10 of the subject specification, an example of a data structure is described which is used by an EPG database to organize programming information and to correlate target specifications with programs. The data structure includes a number of data records comprising various data fields for holding programming information. The data structure includes a data field for holding target specifications which reference target resources supporting the supplemental content. The data structure correlates the target specifications with the programs by associating them within the same program record. The presence of a target specification within the data field indicates that the associated program is interactive and that complementary content can be displayed in addition to the program itself.

The Office asserts Youman at col. 8, lines 8+, and FIGS 1, and 19-21 for teaching “the associating” as recited in Claim 57, the asserted portion of Youman is excerpted as follows:

The transmitted program schedule data or application software is received by the receiver 12 on signal input line 11. The received signal is passed from the receiver to a data demodulator 13, such as a QPSK demodulator or a GI Info-Cipher 1000R, which demodulates the transmission and passes it to a buffer 15.

A microcontroller 16, such as a M68000EC, receives data passed to the buffer 15. Bootstrap operating software, which may be used for capturing electronic program guide application software updates, is stored in a read only memory (ROM) 17. The microcontroller 16 uses the received program schedule information to build a database by storing the data in appropriately organized records in dynamic random access memory (DRAM) 18. The stored schedule information can be updated on a periodic basis, such as hourly, daily or weekly, or at any time when changes in scheduling or other factors warrant an update. The system also includes a system clock 19.

Alternatively, the program schedule information could be supplied in a ROM, disk or other non-volatile memory, or it could be downloaded to a storage disk or other data storage device. The invention herein is not directed to the particular method of transmission or reception of the schedule information. *Youman, Col. 8, Lines 8-32.*

This excerpt merely describes a supply of program schedule information. Neither the referenced figures, nor the referenced section, nor anywhere else in Youman is there disclosure, teaching, or suggestion for the claimed association.

3. Claim 57 is patentable over Freeman in view of Steele and further in view of Youman, alone or in combination

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970). As acknowledged by the Examiner, neither Freeman nor Steele, alone or in combination, disclose, teach, or suggest “an electronic programming guide (EPG) stored in the memory and executable on the processor to organize programming information, the EPG associating a target specification to a target resource with a video content program” as claimed in claim 57. Youman does not correct his defect. Youman merely describes operation of an EPG to obtain additional information about a program. Youman does not disclose, teach or suggest the desirability of associating a target specification and a target resource with a video content program.

For at least these reasons, Claim 57 satisfies the requirements of 35 U.S.C. § 103 so as to be patentable over Freeman, Steel and Youman, alone and in combination. The Appellant respectfully requests the Board to overturn the Fourth Ground of Rejection.

Fifth Ground of Rejection. Claim 62 satisfies the requirements of 35 U.S.C. §103 and therefore is not obvious over Freeman in view of Steele and further in view of Youman.

1. Claim 62 recites Determining that the Program is interactive compatible by presence of a target specification being associated with the Program in the Program Listing

Claim 62 recites “a computer-implemented method as recited in claim 61” in which “the target specifications are correlated with the program in a program listing”, and further “checking the program listing to ascertain whether the program is interactive compatible” and “determining that the program is interactive compatible by presence of a target specification being associated with the program in the program listing”.

2. Neither Freeman, Steele, nor Youman, alone or in combination, disclose, teach or suggest such Determining

The Office correctly asserts that neither Freeman nor Steele specifically disclose the claim limitations of claim 62. The Office then asserts Youman to cure the defects of Freeman and Steele. Youman, however, merely describes additional information that may be viewed in an EPG, as shown in the following excerpt:

In each of the FLIP, BROWSE and MENU modes, a lower case "i" icon appears at a number of occasions in connection with certain program listings, such as movies, such as the "i" 203 shown in FIG. 20. Any time this icon appears, the user can view additional programming information, generally comprising a textual description of program content and/or other information related to the program, such as the names of cast members and the like, by depressing the "i" key 48 on the remote controller 40. An example of a display of such additional information is shown in FIG. 21. *Youman, Col. 17, Line 66 to Col. 18, Line 9.*

Thus, Youman merely describes viewing additional information in an EPG.

3. Claim 62 is patentable over Freeman in view of Steele and further in view of Youman, alone or in combination

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970). As acknowledged by the Examiner, neither Freeman nor Steele, alone or in combination, disclose, teach, or suggest the claim limitations of Claim 62. Youman does not correct the defects of both of these references, namely that "the target specifications are correlated with the program in a program listing", "checking the program listing to ascertain whether the program is interactive compatible", and "determining that the program is interactive compatible by presence of a target specification being associated with the program in the program listing" as claimed in Claim 62. Additionally, Claim 62 is a dependent claim that is

dependent from Claim 61, and as such, is also allowable for the reasons stated in relation to Claim 61.


For at least these reasons, Claim 62 satisfies the requirements of 35 U.S.C. § 103 so as to be patentable over Freeman, Steel and Youman, alone and in combination. The Appellant respectfully requests the Board to overturn the Fifth Ground of Rejection.

CONCLUSION

The Examiner's basis and supporting rationale for the 35 U.S.C. §103 rejections is not supported by relevant authority, is inconsistent with established examination practice and/or does not comport with the teachings of the cited references. Appellant respectfully requests that the rejections be overturned and that pending claims 56-57 and 61-67 be allowed to issue.

Respectfully Submitted,

Dated: 11/30/01

By: 
William J. Breen, III
Lee & Hayes, pllc
Reg. No. 45,313
(509) 324-9256 ext. 249



APPENDIX OF APPEALED CLAIMS

Claims 1-55 (cancelled).

56. A viewer computing unit for receiving and displaying continuous video content programs, comprising:

a memory;

a processor programmed to determine whether the video content programs are interactive;

a tuner to tune to channels carrying the video content programs; and

an Internet browser stored in the memory, the Internet browser being dynamically loadable for execution on the processor when the tuner is tuned to a channel carrying a video content program that is interactive.

57. A viewer computing unit as recited in claim 56, and further comprising:

an electronic programming guide (EPG) stored in the memory and executable on the processor to organize programming information, the EPG associating a target specification to a target resource with a video content program; and

the Internet browser activating the target resource when the tuner is tuned to the video content program.

Claims 58-60 (cancelled).

61. A computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program, comprising the following steps:

determining if a program is interactive compatible, where an interactive compatible program is associated with target resources containing data which supports interactive functionality, the target resources being located by corresponding target specifications; and

in an event that the program is interactive compatible, retrieving a target specification associated with the program and dynamically launching an Internet browser to activate the target resource in support of interactive functionality for the program.

62. A computer-implemented method as recited in claim 61, wherein the target specifications are correlated with the program in a program listing, and further comprising the following steps:

checking the program listing to ascertain whether the program is interactive compatible; and

determining that the program is interactive compatible by presence of a target specification being associated with the program in the program listing.

63. A computer programmed to perform the steps recited in claim 61.

64. A computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program, comprising the following steps:

determining if a program is interactive compatible by checking a channel separate from said channel carrying the video content program for presence of the supplemental content, where an interactive compatible program is associated with target resources containing data which support interactive functionality in conjunction with the video content program, the target resources being located by corresponding target specifications; and

in an event that the program is interactive compatible, retrieving a target specification associated with the program and dynamically launching an Internet browser to activate the target resources in support of interactive functionality for the program.

65. A computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program, comprising the following steps:

determining if a program is interactive compatible, where an interactive compatible program is associated with target resources containing data which support interactive functionality in conjunction with the interactive compatible program, the target resources being located by corresponding target specifications;

displaying an icon to visually inform the viewer that the program is interactive compatible; and

in an event that the program is interactive compatible, retrieving a target specification associated with the program and launching an Internet browser to activate the target resource in support of interactive functionality for the program.

66. A computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program, comprising the following steps:

determining if a program is interactive compatible, where an interactive compatible program is associated with target resources containing data which supports interactive functionality in conjunction with the interactive compatible program, the target resources being located by corresponding target specifications;

displaying the interactive supplemental content in response to the viewer activating an icon; and

in an event that the program is interactive compatible, retrieving a target specification associated with the program and launching an Internet browser to activate the target resource in support of interactive functionality for the program.

67. A computer-implemented method for activating interactive supplemental content for a video content program upon tuning to a channel carrying the video content program, comprising the following steps:

determining if a program is interactive compatible, where an interactive compatible program is associated with target resources containing data which support interactive functionality in conjunction with the interactive compatible program, the target resources being located by corresponding target specifications;

in an event that the program is interactive compatible, retrieving a target specification associated with the program and launching an Internet browser to activate the target resource in support of interactive functionality for the program; and

automatically displaying the interactive supplemental content together with the program.

END OF DOCUMENT



12-01-04

EV546076980

PTO/SB/21 (08-06)

AF/2611

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/349,638
	Filing Date	7/8/1999
	First Named Inventor	Daniel J. Shoff
	Group Art Unit	2611
	Examiner Name	Goddard, B.
Total Number of Pages in This Submission	Attorney Docket Number	MS1-089USC1

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Documents <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (<i>Appeal Notice, Brief, Reply Brief</i>) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Name	William J. Breen, III, Reg. No. 45313		
Signature			
Date	11/30/04		

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	Carly Taylor		
Signature		Date	11/30/04

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



EV546076980

PTO/SB/17 (10-04)

Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**FEE TRANSMITTAL
for FY 2005**

Effective 10/01/2004. Patent fees are subject to annual revision.

Complete if Known

Application Number	09/349,638
Filing Date	7/8/1999
First Named Inventor	Daniel J. Shoff
Examiner Name	Goddard, B.
Art Unit	2611
Attorney Docket No.	MS1-089USC1

☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT (\$)** 340.00**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:

Deposit Account Number	12-0769
Deposit Account Name	Lee & Hayes, PLLC

The Director is **authorized to:** (check all that apply)☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) during the pendency of this application.☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code	Entity Fee (\$)	Small Entity Fee Code	Fee (\$)	Fee Description	Fee Paid
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1)

0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20 =	x 18	=
Indep. Claims	-3 =	x 88	=
Multiple Dependent			=

Large Entity Fee Code	Entity Fee (\$)	Small Entity Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) \$

0.00

**or number previously paid, if greater; For Reissues, see above.

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code	Entity Fee (\$)	Small Entity Fee Code	Entity Fee (\$)	Fee Description
1051	130	2051	65	Surcharge - late filing fee or oath
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet
1053	130	1053	130	Non-English specification
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination
1804	920*	1804	920*	Requesting publication of SIR prior to Examination action
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action
1251	110	2251	55	Extension for reply within first month
1252	430	2252	215	Extension for reply within second month
1253	980	2253	490	Extension for reply within third month
1254	1,530	2254	765	Extension for reply within fourth month
1255	2,080	2255	1,040	Extension for reply within fifth month
1401	340	2401	170	Notice of Appeal
1402	340	2402	170	Filing a brief in support of an appeal
1403	300	2403	150	Request for oral hearing
1451	1,510	1451	1,510	Petition to institute a public use proceeding
1452	110	2452	55	Petition to revive - unavoidable
1453	1,330	2453	665	Petition to revive - unintentional
1501	1,370	2501	685	Utility issue fee (or reissue)
1502	490	2502	245	Design issue fee
1503	660	2503	330	Plant issue fee
1460	130	1460	130	Petitions to the Commissioner
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)
1806	180	1806	180	Submission of Information Disclosure Stmt
8021	40	8021	40	Recording each patent assignment per property (times number of properties)
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))
1801	790	2801	395	Request for Continued Examination (RCE)
1802	900	1802	900	Request for expedited examination of a design application.

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

340.00

SUBMITTED BY**Complete (if applicable)**

Name (Print/Type)	William J. Breen, III	Registration No. (Attorney/Agent)	45313	Telephone	509-324-9256
Signature		Date	11/20/04		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.